Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The grantee must review and approve rents proposed by the owner for units with "flat rents," i.e., units subject to the maximum rent limitations in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in lower income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the grantee annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraphs (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 7805).

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in section 8 fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

§954.307 Homeownership: qualification as affordable housing.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing: (1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in §954.401, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase; and

(3) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than $15,000; 10 years where the per unit amount of HOME funds provided is $15,000 to $40,000; and 15 years where the per unit amount of HOME funds provided is greater than $40,000—to resale restrictions, as described in paragraph (a)(3)(i) of this section, or recapture provisions, as described in paragraph (a)(3)(ii) of this section, that are established by the grantee and determined by HUD to be appropriate.

(i) Resale restrictions must make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

(ii) A grantee's recapture provisions must provide for the recapture of the full HOME investment out of net proceeds, except as provided in paragraph (a)(3)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the grantee's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the grantee's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 954.306(a)(3)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on rental units may be terminated at the discretion of the tribe.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

§ 954.308 Prohibited activities.

(a) HOME funds may not be used to—